61-4929

14 JUN 1961

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Extraterritorial Effect of Criminal Statutes

1. This memorandum is for information only.

2. Some criminal statutes specify that they will have extraterritorial effect, some are limited in jurisdiction and scope by their own language, and others are silent on the extent of the jurisdiction. In the last instance the better rule appears to be that a criminal statute will not have extraterritorial effect unless the intent of Congress in that regard is reasonably clear from the language of the act. However, in the Bowman case, which involved an indictment for conspiracy to defraud a corporation of which the United States was a stockholder, the Supreme Court stated, "Some such offenses can only be committed within the territorial jurisdiction of the government because of the local acts required to constitute them. Others are such that, to limit their locus to the strictly territorial jurisdiction, would be greatly to curtail the scope and usefulness of the statute, and leave open a large immunity for frauds as easily committed by citizens on the high seas and in foreign countries as at home. In such cases, Congress has not thought it necessary to make specific provision in the law that the locus shall include the high seas and foreign countries, but allows it to be inferred from the nature of the offense." (United States v. Bowman, 250 U.S. 94 (1922))

3. There is some debate among lawyers as to whether the Bowman case would be followed today to permit establishment of the intent of Congress by inference. This is important in connection with the present status of the Espionage Acts. The original act in 1911 was specifically stated to have extraterritorial effect.

OGC Has Reviewed

(EXECUTIVE REGISTRY) Gen. Counsel

This has been modified over the years until the present chapter containing the Espionage Laws opens with section 791 of Title 18 U. S. C., which reads "This chapter shall apply within the admiralty and maritime jurisdiction of the United States and on the high seas, as well as within the United States." Quite clearly this chapter would not have extraterritorial effect. There is, however, a separate statute punishing any officer or employee of the United States who communicates classified information knowing it to be classified to a representative of any foreign government or member of any communist organization without being specifically authorized to do so. This was enacted in the Internal Security Act of 1950 and is considered to have extraterritorial application. It should be noted this Act has not been tested in the courts and may present problems since many lawyers are concerned that a statute making it a crime to pass "classified information" is not sufficiently definite particularly so where there is no accompanying definition of classified information in the statute. However, a person not an officer or employee of the United States who commits an act of espionage in a foreign country is not indictable for that act under the Espionage Laws in the United States. He may, of course, be subject to prosecution under the law of the foreign government, and this is true even if the act were committed in the U. S. Embassy or Consulate, provided the foreign country concerned could arrest him outside the U. S. diplomatic property.

4. For some years this office has been carrying on discussions with the Department of Justice, looking to an extension of the jurisdiction of the Espionage Laws. For example, by letter of 28 February 1958, the Agency raised a number of questions concerning tightening of the security laws including this question of extension of jurisdiction. Partly as a result of this letter and our previous conversations, Justice introduced a bill to extend the jurisdiction of the Espionage Laws by the method of repealing section 791 cited above. The former Attorney General and the present one have both stated to the Congress that in their opinion such a repeal would effectively provide extraterritorial jurisdiction in the light of the language of the Supreme Court in the Bowman case. Despite such authority, we have had doubts that this would necessarily be the case. Not only is there some question as to whether the Bowman case would be followed, but even if it were the legislative history of the Espionage Acts would indicate a congressional intent to limit jurisdiction rather than to extend it. We have suggested to Justice, therefore, that instead of

repealing section 791 it be amended to add the words "and elsewhere" after the words "high seas." The Department of Justice has not agreed with our viewpoint and continues to sponsor simple repeal.

5. The first bill to extend the jurisdiction of the Espionage Acts (chapter 37 of Title 18) by repeal of section 791 of that Title was passed by the House of Representatives on 18 August 1958. This bill failed of passage in the Senate, however, and an identical bill was introduced in the 86th Congress and passed in the House on March 2, 1959. On the Senate side, in early 1960, the staff of the Senate Internal Security Subcommittee worked with the House-passed bill, H. R. 1992, attempting to incorporate the House provisions into an Omnibus Bill, S. 2652. In viewing a draft of S. 2652, Agency representatives advised the Subcommittee staff that the language utilized was technically incorrect in that it did not go to jurisdiction but simply to venue. The staff appreciated our suggestions and said they would correct the matter. In addition, we furnished them an Agency-prepared legal memorandum entitled "Broadening the United States' Jurisdiction Under the Espionage Laws." The thrust of this memorandum was to recommend specific words in section 791 indicating its applicability overseas rather than a simple repeal of 791. Eventually S. 2652 was reported out in the Senate without clarifying the language as to jurisdiction and also it did not utilize specific words pertaining to extension of jurisdiction. This was again brought to the attention of the Internal Security Subcommittee in August of 1960 and they indicated that they hoped to introduce a separate bill containing the specific wording as to extension of jurisdiction so that it could be utilized as a vehicle for amending S. 2652 when it came up on the Senate calendar. This did not come to pass.

6. During the hearings conducted by the Special Subcommittee of Armed Services to Investigate Intelligence Agencies as an aftermath of the Martin-Mitchell affair, it was pointed out by the Agency in its testimony that the Espionage Acts did not extend to offenses occurring abroad. In October 1960, at the request of the House Committee on Un-American Activities for suggestions of legislation in the security field, we brought to their attention the lack of extraterritorial effect of the Espionage Laws and left with them our legal memorandum "Broadening the United States' Jurisdiction Under the Espionage Laws." Subsequently, on January 3, 1961, Mr. Walter introduced an Omnibus Bill, H. R. 6,

to amend the Internal Security Act of 1950, and for other purposes. Included in that bill was provision for extending the jurisdiction of the Espionage Laws, utilizing specific words rather than repeal of section 791. No final Committee action has been taken on this Omnibus Bill.

7. On January 16 Mr. Poff introduced a bill to extend the jurisdiction of the Espionage Laws through the device of repealing section 791. Shortly after this bill was introduced we raised with Mr. Poff the question of the precise wording which would best accomplish the purpose which he had in mind and left with him the legal memorandum on broadening the United States' jurisdiction mentioned above. Subsequently, on 7 June 1961, the House Judiciary Committee reported out H. R. 2730 favorably. In the report there are included letters from the present Attorney General as well as the former Attorney General, both of which support the type of legislation in H. R. 2730 and comment that the Department of Justice recommends repeal of section 791 which will thus give extraterritorial effect to chapter 37 within the rule expressed in United States v. Bowman.

8. On other occasions the Agency has informally pressed for action or supported extension of the jurisdiction of the Espionage Laws. For example, we have pointed out this deficiency and discussed it with at least two members of the Kilday CIA Subcommittee. On another occasion this was mentioned to Senator Keating who had been most interested in this bill when he was in the House of Representatives.

s/ Lawrence R. Houston

LAWRENCE R. HOUSTON
General Counsel

cc: DDCI
ER
DD/S
CI Staff
D/Security
IG
Legislative Counsel
General Counsel

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General Counsel 221 East	6/15/61

FORM NO. 237 Replaces Form 30-4 which may be used. (40)

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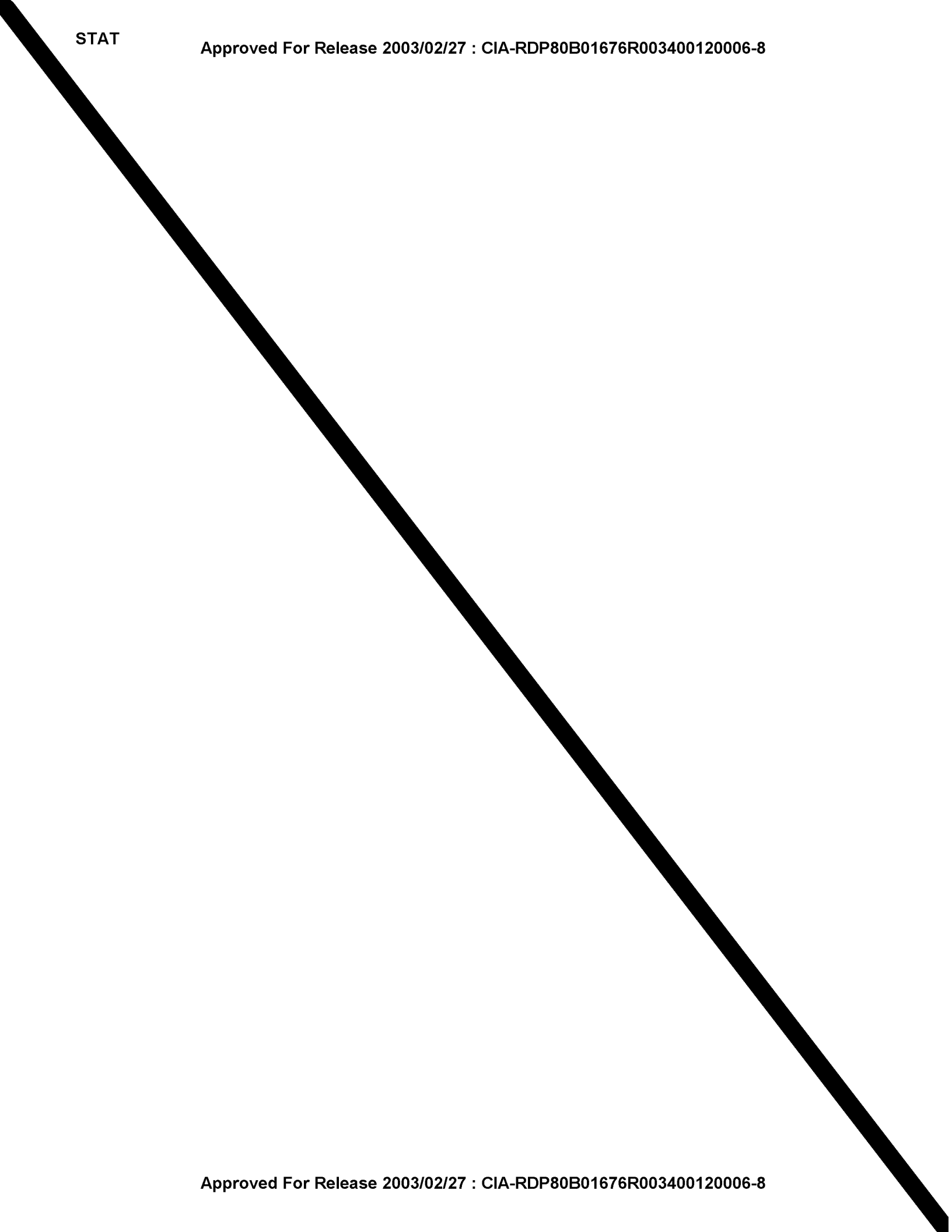

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17 May 1961

Kitty
Chris
Per file

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Association of General Counsel Meeting at Sea Island, Georgia

1. This memorandum contains a recommendation in paragraph 4 for approval of the Director of Central Intelligence.

2. Attached is the list of those who attended the meeting at Sea Island, Georgia, starting May 14th, of the Association of General Counsel and the companies they represent. These companies comprise a substantial portion of American industry outside of railroads and utilities which are not represented.

3. The members of the Association are an interesting and able group of men and received us most cordially. At the first business session on Monday morning I made a short introductory statement expressing your regrets, stressing the non-policy role of the Agency, and introducing [redacted] He then made a 40-minute presentation, analyzing first the ideological differences between Khrushchev and Mao Tse-tung and then demonstrating by examples how these differences followed through the specific actions, particularly in the Latin America area. He stressed the role of Cuba and the Castro government in the subversive conspiracies in South America and gave examples of activities in various Latin American countries. During the question period most of the questions were directed to follow-ups on [redacted] presentation. One or two questions were asked about the invasion of Cuba by the anti-Castro combat forces. These did not press as to any role CIA played in such invasion but queried as to the accuracy of newspaper articles in such statements as those that claimed that Castro was prepared for the

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landing forces and slaughtered them as they came ashore. I merely said that our information did not agree on this point and that it indicated the forces got ashore with only minor resistance. One member inquired as to the morality of the U. S. support of the invasion in the light of our international commitments, and I said this was a matter for consideration by the Department of State.

STAT 4. I believe [redacted] presentation was very effective and certainly it was well received. Many discussions followed with individual members of the Association, and a good part of such discussions was on the question of what American industry could do to help Government in combatting the problems faced in Latin America. Mr. Maddock of Hercules Powder told me that several members of the Association were going to report our participation to their presidents with a recommendation that the presidents seek guidance from the Government as to what cooperation and support their industries can give to Government policy. He said that if these presidents agreed to make such an approach he would let me know and ask us to try to try to set up a meeting with the appropriate people in the Department of State.

STAT I recommend that Mr. [redacted] and I brief appropriate people in the Department of State on the interest shown by industry during this meeting and the fact that there well may be an approach by top members of industry to discuss the role that industry play in assisting the Government in carrying out its policy in Latin America.

s/ Lawrence R. Houston

LAWRENCE R. HOUSTON
General Counsel

Attachment

The recommendation in paragraph 4 is approved

[redacted]
ALLEN W. DULLES
Director

18 MAY 1961
Date

Next 1 Page(s) In Document Exempt

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